

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DANIEL RAY BONILLA,

Plaintiff,

**3:15-cv-1240
(GLS/DEP)**

v.

STATE OF NEW YORK,

Defendant.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

DANIEL RAY BONILLA
Plaintiff *Pro Se*
Broome County Correctional Facility
P.O. Box 2047
Binghamton, New York 13902-2047

**Gary L. Sharpe
Senior District Judge**

ORDER

The above-captioned matter comes to this court following a Report, Recommendation & Order (R&R) by Magistrate Judge David E. Peebles, duly filed on November 16, 2015. (Dkt. No. 4.) Following fourteen days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

No objections having been filed, and the court having reviewed the R&R for clear error, it is adopted in its entirety. The court also notes that Bonilla has filed a letter, which raises issues about the conditions of his confinement. (Dkt. No. 8.) As this case in no way involves those conditions, injunctive relief on that front is unavailable. *See Austin v. Rock*, No. 9:14-CV-0041 (TJM/ATB), 2015 WL 7776562, at *3 (N.D.N.Y. Dec. 2, 2015). The court also acknowledges Bonilla's most recent letters in which he expresses his desire to file an amended complaint and purports to file such an amended pleading. (Dkt. Nos. 9, 10.) Consistent with the court's adoption of the R&R, which grants Bonilla leave to replead, the court accepts Bonilla's filing, (Dkt. No. 10), as the amended complaint and directs the Clerk to docket it as such.

Accordingly, it is hereby

ORDERED that the Report, Recommendation & Order (Dkt. No. 4) is **ADOPTED** in its entirety; and it is further

ORDERED that the complaint (Dkt. No. 1) is **DISMISSED**, with prejudice as against the State, but otherwise with leave to replead within thirty (30) days of the date of this order; and it is further

ORDERED that, if plaintiff fails to file an amended complaint within

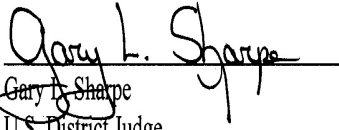
the time frame set forth in this order, the clerk is directed to close this case without further order of the court; and it is further

ORDERED that the Clerk shall docket plaintiff's most recent filing (Dkt. No. 10) as an amended complaint; and it is further

ORDERED that the Clerk of the court serve a copy of this order upon the parties in accordance with this court's Local Rules.

IT IS SO ORDERED.

January 15, 2016
Albany, New York



Gary L. Sharpe
U.S. District Judge